IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1613 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NATIONAL INSURANCE COMPANY

Versus

GANGAJI THAVAR

Appearance:

DAKSHESH MEHTA for Appellant
MR FB BRAHMBHATT for Respondent No. 1
RULE SERVED for Respondent No. 2-3,5-6
RULE UNSERVED for Respondent No. 4

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. At the request of learned counsel for the appellant this appeal is taken up for hearing today.

2. This is an appeal by the Insurance Company under section 173 of the Motor Vehicles Act, challenging the interim order passed under section 140 of the Motor Vehicles Act, by the Motor Accident Claims Tribunal, Kutch at Gandhidham. It is pertinent to note that this award under section 140 of the Act has been passed as an order at Exh.7/D in the main claim petition filed under section 166 of the Act being Motor Accident Claim Petition No.1881/99. Obviously, this award is in the nature of an interim award which is subject to adjustment against the award which may be passed in the main claim petition viz. Motor Accident Claim Petition No.1881/99 pending before the Motor Accident Claims Tribunal, Kutch at Gandhidham. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kotadia, reported at 2001(4) JT 477.

3. In the premises aforesaid, we see no useful purpose being served by keeping the matter pending.

4. The original claimant shall, however, file an undertaking before the Tribunal within four weeks of the service of this order on the claimant to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. On the said undertaking being filed, the amount of the impugned award may be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal.

6. Subject to the observations and directions hereinabove, the above appeal is dismissed with no order as to costs.

7. The amount deposited in the appeal, if any, with the Registry is directed to be transmitted to the Tribunal forthwith i.e. not later than 17th July 2001.

8. Direct service is permitted.

[Y.B. BHATT J.] [M.C. PATEL J.]

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